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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

Date: **JUN 14 2012**

Office: PORTLAND, OREGON

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States in 1994 without inspection and remained until his departure in August 2004. The record further reflects that he reentered the United States in August 2004 with Significant Public Benefit Parole. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present from April 1, 1997, the effective date of section 212(a)(9)(B)(i)(II) of the Act, until August 2004. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 19, 2010.

The record indicates that in October 2002, the applicant delivered ¼ pound of methamphetamine to the U.S. Drug Enforcement Agency (DEA). Subsequently, on May 15, 2003, the applicant was arrested and charged with Unlawful Delivery of a Controlled Substance and Unlawful Possession of a Controlled Substance. On January 8, 2004, both charges were dismissed and on May 24, 2005, the Circuit Court of the State of Oregon for the County of Lane issued an order setting aside the record of arrest. Because he had served as an informant after his 2003 arrest, the DEA requested that the applicant be granted Significant Public Benefit parole status in 2004.

Section 212(a)(2) of the Act states, in pertinent part:

(C) Controlled Substance Traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

The decision of the field office director of January 19, 2010 failed to address the issue of whether USCIS has reason to believe that the applicant has been an illicit trafficker in a controlled substance, which would render the applicant inadmissible under section 212(a)(2)(C) of the Act.

The matter will be remanded to the field office director to resolve the question of whether USCIS has reason to believe that applicant has been an illicit trafficker in a controlled substance. If the field office director finds reason to believe that the applicant has been an illicit trafficker in a controlled substance, the Form I-601 application shall be denied, as there is no waiver for inadmissibility under section 212(a)(2)(C) of the Act, and no purpose would be served in granting a waiver under section 212(a)(9)(B)(v) of the Act. Should the field office director find that the applicant is not subject to the provisions of section 212(a)(2)(C) of the Act that would render him inadmissible, the district director shall issue a new decision addressing the merits of the applicant's Form I-601 application, affording the applicant the opportunity to present updated and/or additional evidence of hardship and in support of a favorable exercise of discretion. If that decision is adverse to the applicant, the district director shall certify that decision to the AAO for review.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.